IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 93 of 1995

To

SPECIAL CIVIL APPLICATION No 98 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RELIANCE CONSTRUCTION CO

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 93 of 1995

MR RC KAKKAD for Petitioner No. 1

MR AD Oza, GP with Mr. PD Bhate, AGP

for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 08/12/2004

ORAL COMMON JUDGEMENT

In all these petitions the respective petitioners

have challenged the legality and validity of the orders passed by the respondent No.2 in exercise of powers under Section 32-A of the Bombay Stamp Act, 1958 {"the Act" for short} by which the respective petitioners are directed to pay the requisite stamp duty along with Rs. 250/= by way of penalty. The document came to be executed between the parties on 5.7.1990. It is the case of the petitioners that it is a lease deed executed between the parties and it is not a sale deed. The powers came to be exercised by the respondent No.2 under Section 32-A of the Act by issuance of the notice dated 11.11.1992, i.e. after a period of 2 years. It is the case of the petitioners that the petitioners had not received any notice calling upon the petitioners to show cause why the aforesaid document cannot be construed as a sale deed and why the deficit stamp duty should not be paid. The impugned orders came to be passed by the respondent No.2 directing the respective petitioners to pay the deficit stamp duty along with Rs. 250/- by way of penalty considering the document as a sale deed. It is the case of the petitioners that this is non-application of mind on the part of respondent No.2 as the document in question is not a sale deed but it is a lease deed executed between the parties and the respondent No.2 has treated it as if it is a sale deed. He has further submitted that if an opportunity would have been given to the petitioners then the petitioners would have pointed out the aforesaid aspect.

2. Shri Kakkad, learned advocate appearing on behalf of the petitioners has submitted that the impugned orders are bad in law and against the principles of natural justice as the petitioners were not served with any notice as envisaged under Rule 4 of the Bombay Stamp [Determination of Market Value of Property] Rules, 1984, ("the Rules" for short) and has submitted that only on that ground the said Special Civil Applications are required to be allowed. He has also further submitted that even the exercise of power by the respondent No.2 was beyond the period of 2 years and there is no justification for delay in initiation of proceedings after a period of 2 years.

3. Shri PD Bhate, learned AGP has submitted that in fact in the impugned orders itself it is stated that the petitioners were served with the notices under Rule 4 of the said Rules. However they did not appear and no reply was submitted and therefore the impugned orders are passed.

4. Heard the learned advocates appearing for the

parties. It is true, that in the impugned orders it is stated that notices under Rule 4 of the said Rules had been served upon the petitioners. However, even in the aforesaid impugned orders no particulars were given when the notices were issued and served. Even no dates are given with regard to the notices under Rule 4 of the said Rules in the petition. There is a specific contention on behalf of the petitioners that the petitioners were not served with any notice under Rule 4 of the aforesaid Rules, which is not denied by the respondents by way of affidavit-in-reply. In view of the aforesaid facts and circumstances, the impugned orders are required to be quashed and set aside only on the ground that the petitioners were not served with the notices as required under Rule 4 of the said Rules and also in view of the decision of the Full Bench decision of this Court in the case of Shaileshkumar Vs. Sub-Registrar, Vadodara, reported in 1996 (3) GLR 783 to the effect that service of notice under Rule 4 is considered to be mandatory.

5. Considering the aforesaid facts and circumstances, the impugned orders, in each of the petition, are required to be quashed and set aside and are hereby quashed and set aside. The matters are remanded to the respondent No.2 for deciding the same afresh after following necessary procedure as required to be followed under the said Act and the Rules and after giving an opportunity to all the parties. It will be open for the petitioners to take all contentions available to them inclusive of one relating to exercise of powers within reasonable time and that the document is not a sale deed but it is a lease deed. Rule is made absolute to the aforesaid extent in each of the matter with no order as to costs.

[M.R. Shah, J.]

rmr.